IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4002 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JITENDRASINH VIJAYSINH ZALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4002 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MRS HANSA PUNANI AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/12/2001

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 29/5/2001 passed by the Commissioner of Police, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the two offences registered against the detenu before the Odhav Police Station for the offences punishable under Sections 66(B), 65(A),65(E) and 81 of Bombay Prohibition Act. The learned advocate for the petitioner has further submitted that thereafter, the petitioner made a representation on 12/4/2001 to the concerned authorities through his advocate demanding certain documents, which have not been supplied by the detaining authority. Inspite of teh receipt of the representation from teh petitioner , the concerned authorities did not provide the said vital documents upto 2/7/2000, and thereby the detaining authority has prevented the petitioner to make an effective representation. Thus, the detaining authority has not supplied the vital documents along with the grounds of detention, and even after the receipt of the representation from teh petitioner also till 2/7/2000 the authority has relied upon the said documents while passing the detention order, and thereby the detaining authority has prevented the petitioner to make an representative representation, which is illegal and hence the impugned detention order is required to be quashed and set aside.

The learned counsel for the petitioner has further submitted that the neither the detaining authority nor the State has filed affidavit justifying the action of the detaining authority in not supplying the vital documents though demanded by the petitioner. He has relied upon a judgment delivered by this Court reported in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

"Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the

respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

4. Since no vital documents has been provided to the petitioner and no affidavit has been filed either by the detaining authority or by the State authority for not deciding the representation of the detenu till 2-7-2000, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 29/5/2001 passed against the detenu is hereby quashed. The detenu Jitendrasinh Vijaysinh Zala is set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

Rafik